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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,370	10/20/2003	Chuxin Chen	28787.70	2855
27683	7590	07/20/2006	EXAMINER	
HAYNES AND BOONE, LLP 901 MAIN STREET, SUITE 3100 DALLAS, TX 75202			SUN, XIUQIN	
			ART UNIT	PAPER NUMBER
			2863	

DATE MAILED: 07/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/689,370

Applicant(s)

CHEN ET AL.

Examiner

Xiuqin Sun

Art Unit

2863

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 1-20.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


MICHAEL NGHIEM
PRIMARY EXAMINER

7/17/06

Continuation of 11. does NOT place the application in condition for allowance because: Applicants' arguments filed 06/27/06 have been fully considered but they are not persuasive.

Regarding claims 1 and 10, Applicants argued that the Kekic reference fails to teach "a program for creating one or more analytical reports". This argument is not persuasive. The Examiner's position is that, giving the claim the broadest reasonable interpretation, the Kekic reference does teach this limitation. In particular, Kekic teaches (cols. 27-28, lines 44-8): "logging pertinent information", displaying a detailed statement (i.e., a report, as defined by Merriam-Webster's Online Dictionary), including information such as "the severity associated with an element component's state" and the time when the "information is logged", etc. The teaching of Kekic reads on the claims. The rejections are therefore maintained.

In response to Applicants' arguments about the Hussein reference, the Examiner considers that the Kekic reference does not mention expressly "an analytical report which includes a prediction of exhaustion of the equipment". The combination of Kekic with Hussein's teaching of the concept and the implementation of this limitation (col. 6, lines 9-20) reads on the claim. Applicants' reliance upon the references individually in this regard is further noted. However, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The rejection therefore stands.

Regarding claim 4, Applicants argued that the combination of Kekic and Hussein references fails to teach "defining a review for the selected configuration identifying one or more rules usable to calculate exhaustion of the equipment". This argument is not persuasive. The Examiner's position is that the Kekic reference teaches or suggests or motivates: displaying "the severity associated with a element component's state", receiving and reviewing "pertinent information" including "the component states, events which trigger rule evaluation; and rules which specify what state transition or other action to perform when a given rule condition is satisfied" (Kekic et al., cols. 27-28, lines 44-8). Kekic further teaches: "an accurate picture is constructed of extraordinary element behavior and advanced problem analysis is automatically performed to aid in common network management strategies including configuration management, fault management, and performance management" (Kekic et al., cols. 27-28, lines 44-8). Therefore, it is deemed that the teaching of the Kekic reference reads on the claim. The rejection is maintained.

In response to Applicants' argument that "the combination of the references is improper", the Examiner's position is that the arguments in this regard are not persuasive, for the reasons set forth in details in the Office Action dated 05/17/2006. The rejections are maintained.

XS
07/11/06